IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 3832 of 2005

Between:

M/s.Shine Enterprises, rep.by Manager Mr.Pallate Damodar S/o.Late

P.Kesavulu, C/o.M/s.Shine Enterprises Proddatur, Cuddapah District.

..... PETITIONER

AND

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh,

Nampally, Hyderabad.
2 The Asst.Commercial Tax officer, Check Post, Nagalapuram, Chittoor

District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, more specifically in the nature of writ of Mandamus or any other appropriate direction declaring the action of the Respondent No.2 in detaining the consignment at the check post Nagalapuram from 15-2-2005 without passing of any order and claiming 16% of Entry Tax on the Machinery of Air compressor driven by Diesel as illegal void and ultravires in the interest of justice and equity.

Counsel for the Petitioner: MS.NASEEB AFSHAN

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following :

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The grievance of the petitioner appears to be that in respect of the machinery purchased by it, viz., Ingersoll-Rand model P-300 portable compressor diesel driven along with 3 jack hammers, the actual entry tax is payable at 8%, whereas the 2nd respondent intercepted the transport of the machinery orally demanding to pay the tax at 16%, which the petitioner is not liable to pay as can be seen from Entry 83 of the First Schedule of APGST Act, and that the detention of the machinery is illegal.

Whether the tax is liable to be paid at the rate as claimed by the petitioner or at the rate of 16% as demanded by the Department is the subject matter of adjudication before the 2nd respondent herein.

Having regard to the facts and circumstances of the case, the machinery shall be released on the main ground that the petitioner is prepared to pay admitted tax at the rate of 8%, subject to other conditions. The machinery shall not be allowed to be detained till enquiry is completed by the authority. The dispute as regards the payment of entry tax at 8% as claimed by the petitioner or at 16% as claimed by the department shall have to be adjudicated before the 2nd respondent herein. We are not inclined to adjudicate the same in this writ petition.

Therefore, we intend to pass orders by disposing of the writ petition at the threshold as under:

The 2nd respondent is directed to release the machinery in question on the condition of the petitioner paying entry tax as admitted by him i.e., at 8%, subject to finalisation of the matter by the 2nd respondent by conducting enquiry in accordance with law and on petitioner furnishing an undertaking that in the meanwhile he shall not alienate or otherwise dispose of the machinery and shall produce the machinery as and when required by the authorities.

With the above directions, the writ petition stands disposed of. No order as to costs.

M. H. S. ANSARI, J.

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T.Ch.SURYA RAO, J.

Dated 03-03-2005.

skmr

..... REGISTRAR

To

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh,

Nampally, Hyderabad.

2 The Asst.Commercial Tax officer, Check post, Nagalapuram, Chittoor

District.

3. 2 CCs to G.P. for Commercial Tax, High Court Buildings, Hyderabad

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